

SUPREME COURT OF INDIA

Commissioner of Customs, Kolkata

Vs.

B. Arun Kumar

C.A.No.6223 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

22.10.2008

ORDER

1. Delay condoned.

2. Leave granted.

3. By Commissioner's Order dated 30th October, 1986, redemption fine of Rs.85 lakhs and penalty of Rs.15 lakhs came to be imposed. Against the said order, the assessee (respondent herein) filed an appeal before CEGAT. The Revenue also moved cross appeal/cross objection before the Tribunal. Pursuant to the Commissioner's order, the assessee deposited Rs.45,59,733/- in cash. For the balance amount, bank guarantee was furnished.

4. On 30th April, 1990, the Tribunal passed Order No.154-Cal/1990-154 allowing the assessee's appeal. By the said order, Revenue was directed to refund the redemption fine and penalty within thirty days and in default the Department was liable to pay interest at the rate of 12%. We quote hereinbelow the operative part of the order passed by the Tribunal, which reads as under:

“In the result, the appeal of M/s. B.Arun Kumar & Co., Bombay, succeeds. The impugned order passed by the learned Collector dated 31.10.86 is hereby set aside. We hereby direct the respondents to refund the redemption fine and penalty paid by the Appellants in terms of the above-said order within a period of one month from the date of receipt of this order. In the event of the Respondent's not refunding the amounts within the above-said period of one month the same shall carry interests @ 12% per annum from the expiry of the above period. We also direct the Registry to transfer the cross Objection to the Special Bench, CEGAT, Delhi, for disposal in accordance with law along a copy of this order.”

5. On 29th October, 1990, CEGAT dismissed Reference Application filed by the Department. It refused to refer certain questions arising in the matter to the High Court.

Thereafter, on the Revenue's Application (marked as Matter No.1104/1991), the Calcutta High Court made the rule absolute on two questions which are as under:

“1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in setting aside the order of Collector dated 31st October 1986 and directing the refund with interest?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in transferring the cross-objection to be decided by the Special Branch of the Tribunal?”

6. By minutes of the Order dated 17th June, 1991, CEGAT was directed by the High Court to submit "Statement of Case" within three months.

7. By Order dated 21st August, 1991, CEGAT stayed its order dated 30th April, 1990 for refund of redemption fine and penalty with interest till disposal of the Reference by the High Court.

8. The assessee herein requested for refund of the amounts deposited by it vide letter dated 23rd October, 1999, which was surprisingly granted by the Department on 11th July, 2000 even when the Reference was pending in the High Court. No appeal was filed by the Department against the grant of refund of Rs.45,59,733/-. The assessee received the said amount of Rs.45,59,733/-.

9. Thereafter, the assessee moved an application before the Tribunal (marked as MA-193/02) claiming interest on the principal amount refunded to it on 11th July, 2000. This application was disposed of by the Tribunal vide order dated 19th December, 2002 by which the Commissioner was directed to decide on the application for interest as calculated and claimed by the assessee. The Commissioner rejected the claim for interest vide order dated 12th May, 2003. This order was challenged by the assessee by filing Writ Petition No.12027(W) of 2003. The Writ Petition was allowed by the learned Single Judge which stood confirmed by the Division Bench vide impugned judgment. Hence, this Civil Appeal by the Department.

10. On 19th August, 2008, this Court passed the following order:

“Pending further orders, we are directing the respondent herein, M/s. B.Arun Kumar & Co., to deposit in this Court Rs.45,00,000/- (Rupees forty five lakhs) together with interest at nine per cent per annum from 11th July, 2000 till the date of deposit, within eight weeks.

Office is directed to list the matter immediately on Board on deposit of the said amount. Matter to be listed on non-miscellaneous day. This Court will pass further direction only on such deposit. The Department has filed a further affidavit today.

That affidavit may be taken on record. Liberty is granted to the assessee to file its counter, if so advised, within three weeks.”

11. The above-quoted order came to be passed because the status of the pending Reference Application was not known. It is only in the course of enquiry made during the pendency of this Civil Appeal that we have now come to know that the Department's Application (marked as Matter No.1104/1991) was made absolute on 17th June, 1991 as stated above. Therefore, even today, as can be seen from the order dated 17th June, 1991, the Department's Reference is still pending before the High Court. In fact, by order dated 21st August, 1991, the Tribunal had, inter alia, stayed the order of refund dated 30th April, 1990 till disposal of the Reference by the High Court. It is in these circumstances that we had directed respondent-assessee herein to deposit in the Registry of this Court Rs.45,00,000/- together with interest at 9% interest from 11th July, 2000 (being the date on which the respondent-assessee received Rs.45,00,000/-).

12. The respondent-assessee has complied with the directions of this Court contained in the order dated 19th August, 2008. The assessee has deposited a sum of Rs.79,36,058.52 vide Demand Drafts favouring the Deputy Registrar (Administration), Supreme Court of India, as indicated in its affidavit dated 11th October, 2008 (see page 88 of the paper book).

13. In the above circumstances, without expressing any opinion on the merits of the case, we issue the following directions:

“a) The Tribunal is directed to forward the Statement of Case in the pending Reference (marked as Matter No.1104/1991) within a period of twelve weeks. In this connection, we direct the Department to submit its draft Statement of Case before the Tribunal within six weeks before the Tribunal.

b) On receipt of the draft Statement of Case within six weeks, the Tribunal will take steps to forward the Statement of Case to the High Court.

Since the matter is pending from 1991, we request the High Court to expeditiously decide the said Reference within three months from the receipt of the Statement of Case.

c) We direct the Registry of this Court to transfer the said amount of Rs.79,36,058.52 to the Registrar (Original Side), Kolkata High Court within four weeks.

d) The Registrar (Original Side), Kolkata High Court is directed to invest the said sum in fixed deposit of a Nationalized Bank on such terms and conditions as he deems fit. If the Department wants the amount to be withdrawn, it will make an application to the Kolkata High Court for appropriate directions.

e) All contentions on both sides are expressly kept open.”

14. Subject to above, Civil Appeal filed by the Department stands disposed of subject to respondent paying Rs.25,000/- as costs condition precedent.